



PATENT APPLICATION

PATENT AND TRADEMARK OFFICE

BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of

On Appeal from Group: 3728

Jean-Louis GUERET

Application No.: 10/766,916

Examiner: J. PICKETT

Filed: January 30, 2004

Docket No.: 118335

For: A BOX INCLUDING A HINGE HAVING A LOOP ELEMENT AND A HOOK  
ELEMENT

APPEAL BRIEF TRANSMITTAL

Commissioner for Patents  
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Sir:

Attached hereto is our Brief on Appeal in the above-identified application.

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Respectfully submitted,

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BRIEF ON APPEAL

Appeal from Group 3728

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**I. REAL PARTY IN INTEREST**

The real party in interest for this appeal and the present application is L'Oreal, by way of an Assignment recorded in the U.S. Patent and Trademark Office at Reel 014742, Frame 0281.

**II. RELATED APPEALS AND INTERFERENCES**

There are no prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative, or the Assignee, that may be related to, or that will directly affect or be directly affected by or have a bearing upon, the Board's decision in the pending appeal.

**III. STATUS OF CLAIMS**

Claims 1-39 are on appeal.

Claims 1-39 are pending.

No claims are allowed, and no claims are objected to only for being dependent from a rejected base claim, but are otherwise allowable.

Claims 1-39 are rejected.

No claims are withdrawn from consideration.

No claims are canceled.

**IV. STATUS OF AMENDMENTS**

No Amendment After Final Rejection has been filed.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention of claim 1 is directed to a box (see, e.g., para. [0050]; element 1; Fig. 1) comprising at least one base portion (see, e.g., para. [0050]; element 2; Fig. 1); a lid (see, e.g., para. [0050]; element 3; Fig. 1); and a hinge connecting the lid to the base portion (see, e.g., Fig. 1); wherein the hinge comprises: a first element (see, e.g., para. [0050]; element 4; Fig. 1) fixed to the base portion; and a second element (see, e.g., para. [0050]; element 5; Fig. 1) fixed to the lid, one of said first and second elements comprising loops (see, e.g., para. [0052]; element 13; Fig. 1) and the other of said first and second elements comprising hooks (see, e.g., para. [0052]; element 14; Fig. 1) arranged to co-operate with said loops (see, e.g., para. [0004]; Figs. 1 and 2), wherein the hinge is configured to hold the lid in an upstanding position relative to the at least one base portion (see, e.g., para. [0056]; Figs. 1 and 2).

The invention of claim 38 is directed to a system comprising: a first base portion (see, e.g., para. [0064]; element 2; Figs. 1 and 4) including a housing (see, e.g., para. [0068]; element 60; Fig. 2) receiving at least one cosmetic substance (see, e.g., paras. [0068]-[0069]; element P; Fig. 1), the first base portion having front, rear and lateral faces (see, e.g., Fig. 1); a second base portion (see, e.g., para. [0064]; element 2'; Figs. 1 and 4) including a housing (see, e.g., para. [0068]; element 60; Fig. 2) receiving at least one cosmetic substance (see, e.g., paras. [0068]-[0069]; element P; Fig. 1), the second base portion having front, rear and lateral faces (see, e.g., Fig. 10); a lid (see, e.g., para. [0050]; element 3; Fig. 1); and a hinge connecting the lid to the first base portion (see, e.g., Fig. 1); wherein the hinge comprises: a first element (see, e.g., para. [0050]; element 4; Fig. 1) fixed to the first base portion; and a second element (see, e.g., para. [0050]; element 5; Fig. 1) fixed to the lid; one of said first and second elements comprising loops (see, e.g., para. [0052]; element 13; Fig. 1) and the other of said first and second elements comprising hooks (see, e.g., para. [0052]; element 14; Fig. 1) arranged to co-operate with said loops (see, e.g., para. [0004]; Figs. 1 and 2); wherein the first



base portion comprises on at least one lateral face a third element (see, e.g., para. [0079]-[0080]; Figs. 4, 10 and 11) and wherein the second base portion comprises on at least one corresponding lateral face a fourth element (see, e.g., paras. [0079]-[0080]; Figs. 4, 10 and 11), one of said third and fourth elements comprising loops and the other of said third and fourth elements comprising hooks arranged to co-operate with said loops (see, e.g., para. [0079]; Fig. 10).

The invention of claim 39 is directed to a system comprising: a first base portion (see, e.g., para. [0064]; element 2; Figs. 1 and 4) including a housing (see, e.g., para. [0068]; element 60; Fig. 2) receiving at least one cosmetic substance, the first base portion having front, rear, bottom and lateral faces (see, e.g., Figs 1, 2 and 7); a second base portion (see, e.g., para. [0064]; element 2'; Figs. 1 and 4) including a housing (see, e.g., para. [0068]; element 60; Fig. 2) receiving at least one cosmetic substance (see, e.g., paras. [0068]-[0069]; element P; Fig. 1), the second base portion having front, rear, top and lateral faces (see, e.g., Fig. 4); a lid (see, e.g., para. [0050]; element 3; Fig. 1); and a hinge connecting the lid to the first base portion (see, e.g., Fig. 1); wherein the hinge comprises: a first element (see, e.g., para. [0050]; element 4; Fig. 1) fixed to the first base portion; and a second element (see, e.g., para. [0050]; element 5; Fig. 1) fixed to the lid, one of said first and second elements comprising loops (see, e.g., para. [0052]; element 13; Fig. 1) and the other of said first and second elements comprising hooks (see, e.g., para. [0052]; element 14; Fig. 1) arranged to co-operate with said loops (see, e.g., para. [0004]; Figs. 1 and 2); wherein the bottom face of the first base portion comprises a third element (see, e.g., paras. [0051] and [0065]; Figs. 2, 4 and 5) and the top face of the second base portion comprises a fourth element (see, e.g., paras. [0051] and [0065]; Figs. 1 and 2), one of said third and fourth elements comprising loops and the other of said third and fourth elements comprising hooks arranged to co-operate with said loops (see, e.g., Fig. 2).

**VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The following grounds of rejection are presented for review:

1) Claims 1-3, 11, 12, 14, 15, 17-21, 24, 26-31, 34-36 are rejected as having been obvious under 35 U.S.C. §103(a) over U.S. Patent No. 7,047,983 B2 to Manougian et al. (hereinafter "Manougian") in view of U.S. Patent No. 6,626,432 B2 to Rago et al. (hereinafter "Rago").

2) Claims 4-6, 25 and 37 are rejected as having been obvious under 35 U.S.C. §103(a) over Manougian and Rago and further in view of U.S. Patent No. 3,441,033 to Flax and U.S. Patent No. 5,878,881 to Hunt.

3) Claims 22 and 23 are rejected as having been obvious under 35 U.S.C. §103(a) over Manougian and Rago and further in view of U.S. Patent No. 5,115,916 to Beasley et al. (hereinafter "Beasley").

4) Claims 1, 2, 7-10, 13, 17, 18, 21, 26-28, 30-36, 38 and 39 are rejected as having been obvious under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2002/0153376 to Seidler in view of Rago.

5) Claim 16 is rejected as having been obvious under 35 U.S.C. §103(a) over Seidler and Rago and further in view of U.S. Patent No. 6,216,899 to Vicari.

## VII. ARGUMENT

The Office Action rejects independent claim 1 over the combinations of (1) Manougian and Rago, and (2) Seidler and Rago. The Office Action rejects independent claims 38 and 39 over the combination of Seidler and Rago. These combinations are unreasonable and fail to reasonably suggest the combinations of all of the features of the independent claims.

### A. Claim 1 Would Not Have Been Obvious Over Manougian in View of Rago

#### 1. The combination of Manougian and Rago is unreasonable

Manougian teaches a protected cosmetic container including a base and a lid removably associated with the base to obtain closed and opened positions (Abstract). Manougian further teaches, "where hinges are used to connect the lids and the bases of the housings, the hinges may be formed integrally, unitarily with the lids and bases or as separate mechanical components; reinforced hinges may be used for increased strength" (col. 4, lines 22-26). References to hinges here in Manougian and throughout refer to mechanical and/or reinforced mechanical components (see, *e.g.*, col. 18, lines 18-20, col. 20, lines 27-30, and/or col. 22, lines 58-61). The disclosure of Manougian, therefore, cannot reasonably be considered to suggest any motivation to modify the pinned hinge explicitly taught by that reference with a hinge comprising hooks and loops arranged to cooperate with each other as is asserted by the Office Action at least because such a modification may likely render the Manougian invention unsuitable to its intended purpose.

Rago teaches a game board, and playing card retention clips, for use in windy conditions. With reference to, for example, Fig. 6 of Rago, the Office Action asserts that Rago can reasonably be relied upon as showing a hook and loop hinge. The Office Action goes on to conclude that one of ordinary skill in the art would have found it obvious to substitute the hook and loop game board hinge allegedly shown in Rago for the cosmetic case

pin hinge shown in Manougian. The Office Action asserts that an express suggestion to substitute one "art-recognized" equivalent component or process for another is not necessary to render the substitution obvious. The analysis of the Office Action fails for at least the following reasons.

First, based on the totality of the disclosure of Manougian it is not reasonable to conclude that one of ordinary skill in the art would have been motivated to make the asserted substitution with any reasonable expectation of success. The fact that the alleged hook and loop hinge in Rago may be effective for securing a game board, does not reasonably suggest that it is an "art-recognized" equivalent for the purposes of wired cosmetic case hinges, much less that it could be effectively used for such a purpose.

The assertion that the alleged hinge portion of Rago would have been, in any way, considered an art-recognized substitute for the pinned hinge in Manougian is a conclusion that could only be arrived at through the improper application of hindsight reasoning based on the roadmap provided by Appellant's disclosure. As such, it is unreasonable to assert that Rago constitutes analogous art with respect to the subject matter of the pending claims.

With reference to MPEP §2141.01(a), the standard for finding a reference to be analogous prior art is that "[i]n order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992). The above-cited MPEP section goes on to quote other Federal Circuit precedent that finds that a reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her problem. It is unreasonable to conclude that a game board designed for high-wind conditions would have

logically commended itself to Appellant in considering any identified problem. Rather, the application of Rago appears to be derived from a targeted word search for features of Appellant's disclosure without context.

Second, to the extent that Rago may even be considered analogous art, a conclusion that Appellant does not concede, there is no apparent justification for concluding that one of ordinary skill in the art would have been motivated to combine the teachings of these references in a manner to arrive at the specific features of the hinge is configured to hold the lid in an upstanding position relative to the at least one base portion.

**B. Claims 1, 38 and 39 Would Not Have Been Obvious Over Seidler in view of Rago**

**1. The combination of Seidler and Rago is unreasonable**

Seidler is directed to a virtual magnetic hinge. Seidler discloses a cosmetic case 30 including the virtual hinge. The Office Action concedes that Seidler does not teach cooperating hooks and loops as recited in claims 1, 38 and 39. The Office Action relies on Rago to remedy these shortfalls.

As indicated above, Rago is directed to portable game boards on which various card games can be played outdoors under windy conditions. Portable game boards cannot reasonably be considered to be in Applicant's field of endeavor. Nor can providing a specialized game board, as in Rago, be considered "reasonably pertinent" to the particular problem with which the inventor of the present subject matter was concerned simply because Rago happens to use a Velcro hinge. As indicated above, the assertion that Rago is related to the present subject matter is only arrived at by hindsight reconstruction based on Applicant's solution. It is therefore unreasonable to assert that Rago constitutes analogous art with respect to the subject matter of the pending claims, or that one of ordinary skill in the art would have been motivated to modify Seidler with the teaching of Rago.

Further, one of ordinary skill in the art would not have been motivated to replace the virtual hinge taught by Seidler with the alleged Velcro hinge of Rago at least because Seidler specifically states that the virtual hinge axis neither increases the physical dimensions of the hinge nor physically occupies space intermediate the plates. In other words, Rago is not an "equivalent" hinge to the virtual hinge of Seidler, and modifying Seidler to accommodate the Rago hinge would render Seidler unsuitable for its intended purpose.

2. **The combination of Seidler and Rago fails to reasonably suggest the combinations of all of the features recited in claims 1, 38 and 39.**

a. **Claim 1**

At least with regard to claim 1, like in the combination of Manougian and Rago, there is no apparent justification for concluding that one of ordinary skill in the art would have been motivated to combine the teachings of Seidler and Rago in a manner to arrive at the specific features of the hinge is configured to hold the lid in an upstanding position relative to the at least one base portion.

b. **Claim 38**

Claims 38 and 39 each recite a base portion including a housing receiving at least one cosmetic substance, and a second base portion including a housing receiving at least one cosmetic substance.

Claim 38 further recites, among other features, wherein the first base portion comprises on at least one lateral face a third element and wherein a second base portion comprises on at least one corresponding level a fourth element, one of said third and fourth elements comprising loops and the other of said third and fourth elements comprising hooks arranged to cooperate with said loops.

The combination of Seidler and Rago cannot reasonably be considered to have suggested at least the features of the first base portion comprises on at least one lateral face a

third element and wherein a second base portion comprises on at least one corresponding level a fourth element, one of said third and fourth elements comprising loops and the other of said third and fourth elements comprising hooks arranged to cooperate with said loops. Rago does not disclose an element comprising loops or hooks extending on a lateral face. Seidler teaches a virtual hinge axis 20 about which the magnets 18, 16 rotate from a face-to-face orientation to back-to-back orientation (see Figs. 4 and 5 of Seidler).

**c. Claim 39**

Claim 39 recites, among other features, the bottom face of the first base portion comprises a third element and the top face of the second base portion comprises a fourth element, one of said third and fourth elements comprising loops and the other of said third and fourth elements comprising hooks arranged to cooperate with said loops.

Rago does not suggest any third section would be removably connected to the bottom face of either of the two sections of the disclosed game board.

Seidler teaches a virtual hinge axis 20 about which the magnets 18, 16 rotate from a face-to-face orientation to back-to-back orientation (see Figs. 4 and 5 of Seidler). Even when stacked in multiple plates, the magnets depicted in Seidler are exposed toward a rear face of each of the 12, 14 and 50 (see Figs. 9 and 10 of Seidler).

There is no suggestion that would have led one of ordinary skill in the art to arrive at the specific combination of features including a first element fixed to the first base portion; and a second element fixed to the lid, one of said first and second elements comprising loops and the other of said first and second elements comprising hooks arranged to co-operate with said loops; and the bottom face of the first base portion comprises a third element and the top face of the second base portion comprises a fourth element, one of said third and fourth elements comprising loops and the other of said third and fourth elements comprising hooks arranged to cooperate with said loops.

**VIII. CONCLUSION**

For all of the reasons discussed above, it is respectfully submitted that the rejections are in error and that claims 1-39 are in condition for allowance. For all of the above reasons, Appellants respectfully request this Honorable Board to reverse the rejections of claims 1-39.

Respectfully submitted,



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**APPENDIX A - CLAIMS APPENDIX**

**CLAIMS INVOLVED IN THE APPEAL:**

1. A box comprising:
  - at least one base portion;
  - a lid; and
  - a hinge connecting the lid to the base portion;wherein the hinge comprises:
  - a first element fixed to the base portion; and
  - a second element fixed to the lid,one of said first and second elements comprising loops and the other of said first and second elements comprising hooks arranged to co-operate with said loops, wherein the hinge is configured to hold the lid in an upstanding position relative to the at least one base portion.
2. A box according to claim 1, wherein:
  - the base portion comprises a rear face and a top face;
  - the first element extends over said rear and top faces;
  - the lid comprises a rear face and a bottom face; and
  - the second element extends over said rear and bottom faces.
3. A box according to claim 1, wherein:
  - the base portion has a top face;
  - the base portion comprises at least one third element on said top face;
  - the lid comprises a bottom face;
  - the lid comprises at least one fourth element on said bottom face;
  - one of the third and fourth elements comprising loops and the other comprising hooks; and

the third and fourth elements being disposed in such a manner as to catch together when the box is closed.

4. A box according to claim 3, wherein:  
the base portion has a bottom face; and  
the base portion comprises on said bottom face at least one fifth element comprising at least one of loops and hooks.

5. A box according to claim 4, wherein the fifth element is complementary to the third element, the fifth element being positioned on the bottom face of the base portion in such a manner as to be capable of catching onto at least the third element on another base portion positioned beneath said bottom face.

6. A box according to claim 1, wherein:  
the base portion has a bottom face; and  
the base portion includes on said bottom face at least one sixth element arranged to catch with the first element of another base portion disposed beneath said bottom face.

7. A box according to claim 1, wherein the first element comprises at least two distinct portions.

8. A box according to claim 7, wherein said distinct portions are disposed close to respective opposite side faces of the base portion.

9. A box according to claim 7, wherein the two distinct portions are complementary.

10. A box according to claim 7, wherein the second element comprises two distinct portions disposed on the lid in a corresponding manner.

11. A box according to claim 1, wherein the first element comprises at least one fraction extending over a top face of the base portion and having a width that is not constant.

12. A box according to claim 11, wherein the width increases approaching a rear face of the base portion.
13. A box according to claim 1, wherein the first element comprises fractions fixed on surfaces that are substantially planar.
14. A box according to claim 1, wherein the first element comprises a fraction fixed on a surface that is not planar.
15. A box according to claim 14, wherein the surface is a semi-circular cylinder.
16. A box according to claim 1, wherein one of the lid and the base portion carries a tab comprising at least one of loops and hooks, and wherein the other of the lid and the base portion carries a portion for catching onto said tab.
17. A box according to claim 1, wherein the first element extends in part over at least one side face of the base portion.
18. A box according to claim 1, wherein the second element extends in part over at least one side face of the lid.
19. A box according to claim 1, wherein:
  - each of the base portion and the lid has a perimeter that is not rectangular; and
  - the first and second elements extend over respective fractions of the perimeter of the base portion and of the lid.
20. A box according to claim 19, wherein the perimeter is circular when observed from above.
21. A box according to claim 1, wherein the base portion comprises a rear face, a top face and side faces and wherein the first element extends over the top face, the rear face, and at least one of the side faces of the base portion.
22. A box according to claim 1, wherein at least one of the first and second elements is fixed at least in part in a setback of one of the base portion and the lid.

23. A box according to claim 22, further comprising at least one element comprising hooks fixed in a setback of one of the base portion and the lid.

24. A box according to claim 1, wherein at least one of the base portion and the lid includes a portion in relief arranged to co-operate with a complementary portion in relief of the other one of the lid and the base portion so as to position the lid relative to the base portion when the box is closed.

25. A box according to claim 1, wherein the base portion includes a portion in relief on a bottom face, said portion in relief being arranged to co-operate with a portion in relief of the top face of another base portion so as to position the two base portions relative to each other.

26. A box according to claim 1, wherein the base portion includes a housing receiving at least one substance.

27. A box according to claim 26, wherein the substance is contained in a dish.

28. A box according to claim 1, wherein the base portion includes a housing receiving at least one applicator.

29. A box according to claim 26, wherein the housing has a bottom comprising one of hooks and loops.

30. A box according to claim 1, wherein the lid includes a mirror.

31. A box according to claim 30, wherein the mirror is disposed on a bottom face of the lid.

32. A box according to claim 1, comprising a second base portion superposed with the first.

33. A box according to claim 1, wherein at least one of the first and second elements is movable relative to a corresponding portion of the box.

34. A box according to claim 1, wherein the box is a cosmetic box.

35. A method of using a box according to claim 1, comprising:  
contacting the first and second elements so that the hooks cooperate with the loops; and  
moving the lid relative to the at least one base portion while keeping the first and second elements in contact with each other.
36. A box according to claim 26, wherein the substance is a cosmetic substance.
37. A box according to claim 4, wherein the first and fifth elements are made as a single piece.
38. A system comprising:  
a first base portion including a housing receiving at least one cosmetic substance, the first base portion having front, rear and lateral faces;  
a second base portion including a housing receiving at least one cosmetic substance, the second base portion having front, rear and lateral faces;  
a lid; and  
a hinge connecting the lid to the first base portion;  
wherein the hinge comprises:  
a first element fixed to the first base portion; and  
a second element fixed to the lid;  
one of said first and second elements comprising loops and the other of said first and second elements comprising hooks arranged to co-operate with said loops;  
wherein the first base portion comprises on at least one lateral face a third element and wherein the second base portion comprises on at least one corresponding lateral face a fourth element, one of said third and fourth elements comprising loops and the other of said third and fourth elements comprising hooks arranged to co-operate with said loops.
39. A system comprising:

a first base portion including a housing receiving at least one cosmetic substance, the first base portion having front, rear, bottom and lateral faces;

a second base portion including a housing receiving at least one cosmetic substance, the second base portion having front, rear, top and lateral faces;

a lid; and

a hinge connecting the lid to the first base portion;

wherein the hinge comprises:

a first element fixed to the first base portion; and

a second element fixed to the lid,

one of said first and second elements comprising loops and the other of said first and second elements comprising hooks arranged to co-operate with said loops;

wherein the bottom face of the first base portion comprises a third element and the top face of the second base portion comprises a fourth element, one of said third and fourth elements comprising loops and the other of said third and fourth elements comprising hooks arranged to co-operate with said loops.

**APPENDIX B - EVIDENCE APPENDIX**

NONE

**APPENDIX C - RELATED PROCEEDINGS APPENDIX**

NONE